

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 130 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME-TAX

Versus

GAGALDAS H SANGHVI TRUST

Appearance:

1. INCOME TAX REFERENCE No. 130 of 1987
MR BB NAIK with MR RP BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question for the opinion of this Court at the instance of the Revenue:

"Whether on the facts and in the circumstances of the case and having regard to the provisions of the Trust deed dated 2-7-1977 and the release deed dated 7-10-1980 the trustees were liable to be assessed at the maximum rate u/s.164 of the I.T. Act, 1961 ?"

2. The assessment year is 1981-82 and the relevant accounting year is S.Y. 2036. The assessee is a private trust and the dispute is as to the nature of the trust namely whether the trust is a specific trust or a discretionary trust. Admittedly, uptill the assessment year 1980-81 i.e. immediately preceding assessment year, the trust was treated as a specific trust. It appears that on 7-10-1980 one Surekha Bhikhalal Sanghvi, who was having 10% beneficial share in the assessee trust, relinquished her share in favour of the remaining beneficiary one Rajesh Bhikhalal Sanghvi, who is her brother. According to the Income Tax Officer, on Surekha relinquishing her share in favour of Rajesh, the nature of the trust underwent change and hence he treated the trust as a discretionary trust and levied tax at the maximum marginal rate by invoking the provisions of sec. 164 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The assessee went in appeal before the Appellate Assistant Commissioner, who for the reasons stated in his order, accepted the claim of the assessee trust and held that the nature of the trust which had already been ascertained by virtue of the provisions of the trust deed did not undergo any change by execution of release deed dated 7-10-1980. Being aggrieved by the order of the appellate authority, the Revenue preferred an appeal before the Income Tax Appellate Tribunal.

4. The Tribunal vide its order dated 29-9-1986 held that the relinquishment of share by Surekha in favour of the remaining beneficiary Rajesh did not change the character of the trust and that no discretion was conferred on the trustees. That the duties which were specified in the trust deed by the settlor remained the same and that the trustees did not get any discretion in relation to the distribution of income.

5. We have heard Mr. B.B. Naik, learned counsel for the Revenue. Though served, none has appeared on

behalf of the respondent - assessee.

6. We do not feel that any interference is called for in the Tribunal's order. Admittedly when the trust deed was executed on 2-7-1977 there were two beneficiaries, namely, Surekha and Rajesh and now only one beneficiary i.e. Rajesh remains as a consequence of Surekha relinquishing her share in the trust properties and, therefore, in case of a sole beneficiary there would be no occasion for the trustees to exercise any discretion especially in light of the various clauses of trust deed which have specifically fixed the shares of the beneficiaries in question.

7. The Tribunal was, therefore, right in law in holding that the trustees were not liable to be assessed at the maximum marginal rate u/s. 164 of the Act having regard to the provisions of the trust deed dated 2-7-1977 and the release deed dated 7-10-1980.

8. We, therefore, answer the question posed to us in the negative i.e. in favour of the assessee and against the Revenue.

9. The Reference is disposed of accordingly with no order as to costs.

zgs/-